

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
C.A. No. 04-11836RCL

TRANS-SPEC TRUCK SERVICE, INC.)
D/B/A TRUCK SERVICE,)
Plaintiff)
vs.)
CATERPILLAR, INC.,)
Defendant)

AUDIOVISUAL DEPOSITION OF JOSEPH
M. HOWARD, JR., a witness called on
behalf of the Defendant, pursuant to
Massachusetts Rules of Civil Procedure,
before Susan E. Wilson, Registered
Professional Reporter and Notary Public
in and for the Commonwealth of
Massachusetts, at the Law Offices of
Campbell, Campbell, Edwards & Conroy,
One Constitution Plaza, Boston,
Massachusetts, on Tuesday, May 3, 2005,
commencing at 9:43 a.m.

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DEPONENT Joseph M. Howard, Jr.

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Also Present:

William Barton, Videographer

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EXHIBIT

A

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1	I'm a very faithful person, and I really 2 had to take all of this under 3 consideration.	1	warranty, the cost of warranty, the 2 discounting and, of course, who would 3 stand behind their warranty the best.
4	Q. What research did you do the next day in 5 order to learn that Hartford was not 6 within Southworth Milton's district?	4	Q. In the conversation with Mr. Calderbank 5 comparing the Cummins M11 and the C-12, 6 what did he tell you about relative 7 performance?
7	A. I believe I called Harry Calderbank.	8	A. He showed me comparison charts between 9 the two engines, economy charts. The --
8	Q. What did you say to him and what did he 9 say to you?	10	Q. I'm sorry. I interrupted you. Finish 11 your answer.
10	A. I was -- at that point, I think I had 11 called Harry on concessions of the 12 multiple purchase of Caterpillar engines 13 versus the M11 Cummins. And Harry 14 informed me that -- and I'm not even 15 sure if this was before or after the 16 conversation with Kevin Holmes, but he 17 informed me that Hartford wasn't in his 18 district, that I would have to deal with 19 New Haven.	12	A. I was primarily done. I wanted it to be 13 Caterpillar.
20	Q. Did he tell you the company that you 21 would have to deal with if you bought 22 these trucks in Connecticut?	14	Q. Did you keep those charts that he showed 15 you?
23	A. Well, I know the Caterpillar dealer in 24 New Haven. I can't even think of the	16	A. No. No. Not that long.
		17	Q. What do you remember them showing that 18 was of interest to you?
		19	A. Torque curve, actual power, gross 20 horsepower, grade ability versus 21 economy. One of the big things that he 22 was selling was the cleanliness of the 23 Caterpillar versus the Cummins. I 24 believe he said the Cummins is the --
	66		68
1	name.	1	M11 is the dirtiest engine on the market.
2	Q. H.O. Penn?	3	Q. Does that mean it has high emissions?
3	A. Yes. That is what it was.	4	A. I think, internally, soot. Soot in the oil, if you do an oil analysis.
4	Q. Did Mr. Calderbank tell you that if you 5 purchased these trucks from the 6 Connecticut dealership that you would 7 have to deal with H.O. Penn in terms of 8 servicing for the engines?	6	Q. Anything else that you remember him 7 telling you about relative performance 8 of the Cummins engine and the C-12?
9	A. Yes. Or warranty for the engines or 10 concessions for the engines. Anything 11 about the engine, he couldn't help me. 12 He could fix them. He could fix 13 anybody's Caterpillar, but he couldn't 14 offer any assistance on the financial 15 arrangement.	9	A. He knew I wanted to be talked out of it. 10 So it really wasn't a heated 11 conversation of any kind. I wanted to 12 be talked out of it. I wanted him to 13 match what they were trying to sell me.
16	Q. You mentioned having talked with Mr. 17 Calderbank about concessions on 18 purchasing multiple engines relative to 19 the Cummins engine. Tell me about that 20 conversation. What did you say and what 21 did he say?	14	Q. Have you given me your best memory of 15 the information that Mr. Cummins gave 16 you in the conversation that you had 17 with him comparing the M11 Cummins 18 engine to the C-12?
22	A. I really don't recall the exact 23 conversation, but it was about 24 performance, about weight, about the	19	MS. REIMER: Objection 20 as to form.
		21	A. I didn't quite understand it.
		22	MS. REIMER: You got the 23 wrong name in there.
		24	Q. Have you given me your best and most

1 complete memory of your conversation you
 2 had with Mr. Calderbank comparing the
 3 Cummins engine and the C-12 engine?

4 **A. Yes.**

5 **Q.** He also talked to you about relative
 6 weights of the two engines?

7 **A. Yes.**

8 **Q.** C-12 was lighter?

9 **A. No.**

10 **Q.** C-12 was heavier?

11 **A.** **He said they were the same. There was**
 12 **about 60 pounds difference.**

13 **Q.** What did he tell you about relative
 14 warranties?

15 **A. They were the same.**

16 **Q.** Did he describe the warranties other
 17 than just telling you that they were the
 18 same?

19 **A. I believe he called it a serious
 20 nucleus, and he gave us literature
 21 showing everything that it covered.**

22 **Q.** Was so-called serious nucleus coverage
 23 something that you had on other
 24 Caterpillar engines that you already

1 you if that is the serious nucleus
 2 coverage that you understood Mr.
 3 Calderbank to be talking about. It's a
 4 two-sided document.

5 **A. All I really remember is I did see a**
 6 **list of numbers on a page, and this**
 7 **would have been explained to me, and**
 8 **then Andy would have -- he is my**
 9 **technical guy -- he would have taken it**
 10 **from there.**

11 **Q.** Andy Lind?

12 **A. Yes.**

13 **Q.** The document that I have shown you that
 14 says on the front of it On Highway
 15 Vehicle Engine Extended Service
 16 Coverage, is that a form of document
 17 that Mr. Calderbank showed you in
 18 connection with these conversations he
 19 was having with you concerning --

20 **A. He never showed me a document.**

21 **Q.** You had seen a document of this type
 22 before in connection with your other
 23 Caterpillar engines, correct?

24 **A. I don't remember ever seeing it. I**

70

72

1 owned?

2 **A. Everything, yes.**

3 **Q.** Technically speaking, it was an extended
 4 service contract that you purchased,
 5 correct?

6 **A. Yes.**

7 **Q.** When I say that you purchased, either
 8 you purchased it by paying money or you
 9 got it as part of the overall
 10 transaction whereby you purchased the
 11 truck with the Caterpillar engine in it?

12 **A. Yes. Had a figure -- had a cost figure
 13 on it. If you didn't want it and wanted
 14 the money, I don't think they would give
 15 it to you. No. It did have a cost
 16 figure. It had a value.**

17 **Q.** Let me just show you a document. What I
 18 have got is a package of documents
 19 contained with a letter from your
 20 attorneys. I'm just going to hand it to
 21 you in that form. But I will ask you to
 22 look at the third page of the document,
 23 third page, including the first page,
 24 which is your attorney's letter, and ask

1 **possibly could have, but I don't recall**
 2 **it.**

3 **Q.** In the conversation that you had with
 4 Mr. Calderbank concerning the warranty,
 5 relative warranties as to the Cummins
 6 engine or the C-12 engine, although he
 7 didn't show you the document, did he
 8 tell you what the coverage would be?

9 **A. Yes, he did.**

10 **Q.** What did he say?

11 **A. He said it would be a 500,000 mile
 12 extended warranty.**

13 **Q.** Did he tell you anything else?

14 **A. He told me what it would cover and what
 15 it wouldn't cover.**

16 **Q.** What did he tell you on that subject?

17 **A. All the heavy parts after a certain
 18 time. I don't believe it would cover --
 19 on the extended it wouldn't cover a
 20 turbocharger or injector or an ECM or
 21 something like that, but as far as the
 22 internal combustion parts, pistons,
 23 valves, crankshaft, timing gears,
 24 totally everything.**

<p style="text-align: center;">109</p> <p>1 specifications for these trucks?</p> <p>2 A. I had run across them not too long ago.</p> <p>3 I don't believe that we have -- we still</p> <p>4 have them.</p> <p>5 Q. When did you last see them?</p> <p>6 A. It could have been a couple of years</p> <p>7 ago. I really don't recall.</p> <p>8 Q. Where were they when you saw them?</p> <p>9 A. I don't know if they were in my</p> <p>10 briefcase. I continually throw things</p> <p>11 away. Old things get thrown away.</p> <p>12 Whether it's my briefcase or my desk or</p> <p>13 what have you, things I don't have to</p> <p>14 keep, I don't keep.</p> <p>15 Q. During the process whereby Mr. Medbery</p> <p>16 sent you these line sheets and corrected</p> <p>17 line sheets and you then spoke with him</p> <p>18 about changes to them, during the period</p> <p>19 that that process was going on, did you</p> <p>20 have any communications with Mr.</p> <p>21 Calderbank or anyone else employed by</p> <p>22 Southworth-Milton or Caterpillar</p> <p>23 concerning the engines that were to be</p> <p>24 in these trucks?</p>	<p style="text-align: center;">111</p> <p>1 these trucks?</p> <p>2 A. Retail.</p> <p>3 Q. What do you mean by that?</p> <p>4 A. A truck with, they call it, a big bore</p> <p>5 engine has a higher resale than a</p> <p>6 smaller engine.</p> <p>7 Q. Other than resale value, was there</p> <p>8 anything about the performance</p> <p>9 characteristics or the quality or the</p> <p>10 accessories or the equipment on a 3406E</p> <p>11 that caused you to be interested in that</p> <p>12 as a possible alternative to a C-12 for</p> <p>13 these trucks?</p> <p>14 A. No.</p> <p>15 Q. Was it you who raised the subject with</p> <p>16 Mr. Calderbank about possibly having the</p> <p>17 trucks equipped with a 3406E, or did Mr.</p> <p>18 Calderbank raise that possibility?</p> <p>19 A. I did.</p> <p>20 Q. Had Mr. Medbery, or anyone from</p> <p>21 Minuteman, suggested the possibility of</p> <p>22 a 3406E?</p> <p>23 A. No.</p> <p>24 Q. So you raised, during this period of</p>
<p style="text-align: center;">110</p> <p>1 A. Yes.</p> <p>2 Q. Who did you have those conversations or</p> <p>3 communications with?</p> <p>4 A. Primarily Harry Calderbank.</p> <p>5 Q. Anybody other than Harry Calderbank?</p> <p>6 A. I'm sure I had spoken to Al Cardoza, but</p> <p>7 I don't really recall a specific</p> <p>8 conversation.</p> <p>9 Q. During the period where you are going</p> <p>10 back and forth with Mr. Medbery about</p> <p>11 these line sheets, what were the</p> <p>12 communications you had with Mr.</p> <p>13 Calderbank concerning the engines that</p> <p>14 you wanted to be in these trucks that</p> <p>15 you were discussing?</p> <p>16 A. We discussed other Caterpillar engines</p> <p>17 also and the weight factor between at</p> <p>18 that time a 3406E. It was 600 pounds</p> <p>19 and it was just too heavy, so we</p> <p>20 reverted back to the C-12, and it had</p> <p>21 been working out, so we decided on that,</p> <p>22 and then he told me about the</p> <p>23 discounting.</p> <p>24 Q. Why were you considering a 3406E for</p>	<p style="text-align: center;">112</p> <p>1 time, with Mr. Calderbank about a 3406E,</p> <p>2 and you and he discussed the weight</p> <p>3 penalty that that would entail?</p> <p>4 A. Yes.</p> <p>5 Q. The weight penalty was more than you</p> <p>6 wanted to pay basically, correct?</p> <p>7 A. Yes.</p> <p>8 Q. You also said that during this period of</p> <p>9 time you discussed discounting with Mr.</p> <p>10 Calderbank. What discussion was had on</p> <p>11 the subject of discounting?</p> <p>12 A. Basically, how bad do you want my</p> <p>13 business?</p> <p>14 Q. What did you say to him and what did he</p> <p>15 say to you?</p> <p>16 A. I believe he had given us or offered us</p> <p>17 an extra \$500 discount off of each</p> <p>18 engine over and above what the dealer</p> <p>19 could get from Sterling itself on an OEM</p> <p>20 basis and free of charge extended</p> <p>21 500,000 mile warranty.</p> <p>22 Q. So is that what you and he discussed in</p> <p>23 terms of discounting?</p> <p>24 A. What we had to do was match the M11</p>

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<p>1 Q. During the year 2004, did Minuteman do 2 any work, non-engine work, on these 3 trucks?</p> <p>4 A. No.</p> <p>5 Q. Did Trans-Spec do non-engine work on the 6 trucks?</p> <p>7 A. Yes.</p> <p>8 Q. Why did Trans-Spec stop using Minuteman 9 for non-engine work on these trucks in 10 2004?</p> <p>11 A. Trucks were out of warranty.</p> <p>12 Q. Any other reason?</p> <p>13 A. Not really.</p> <p>14 Q. Had you been satisfied with the service 15 that Trans-Spec had received from 16 Minuteman Truck with respect to work on 17 these trucks or these engines?</p> <p>18 A. Yes.</p> <p>19 Q. You would have no complaints for that 20 work?</p> <p>21 A. I have complaints with everything.</p> <p>22 Q. You had no complaints about Minuteman's 23 work more than you have complaints about 24 any other dealership's work?</p>	<p>1 A. Milton CAT and the Tri-State Freightliner.</p> <p>3 Q. Trans-Spec hasn't done any?</p> <p>4 A. No.</p> <p>5 Q. Up until the time when you learned from 6 Minuteman that Caterpillar had told that 7 it would not pay for engine work that 8 you would take the truck or sent the 9 truck to Minuteman for, had you had any 10 discussions with anyone from Southworth 11 or anyone from Caterpillar concerning 12 engine problems that you were having 13 with the Sterling trucks?</p> <p>14 A. Yes.</p> <p>15 Q. When did you first have a discussion on 16 that subject with someone from 17 Southworth or from Caterpillar?</p> <p>18 A. We consistently had discussions with Harry Calderbank and Al Cardoza.</p> <p>20 Q. When did you have the first such 21 discussion with one of those two 22 gentlemen?</p> <p>23 A. When things started getting more non-coincidental.</p>
226	228
<p>1 A. That's a true statement.</p> <p>2 Q. In the year 2004, other than Trans-Spec 3 itself, who performed non-engine work on 4 these trucks?</p> <p>5 A. Just Trans-Spec.</p> <p>6 Q. So all of the non-engine work in 2004 7 was done by Trans-Spec?</p> <p>8 A. Correct.</p> <p>9 Q. And is that true for 2005 as well?</p> <p>10 A. Yes.</p> <p>11 Q. In 2004, who did the engine work on the 12 engines in the Sterling trucks?</p> <p>13 A. Milton CAT or Tri-State Freightliner.</p> <p>14 Q. Did Trans-Spec do any engine work in 15 2004 on these trucks?</p> <p>16 A. In the very beginning, I believe we did.</p> <p>17 Q. What kind of engine work?</p> <p>18 A. Whatever we had to.</p> <p>19 Q. Do you remember what that was?</p> <p>20 A. Flywheel housings.</p> <p>21 Q. Anything else?</p> <p>22 A. I don't recall anything else.</p> <p>23 Q. Then in 2005, who has done engine work 24 on these trucks?</p>	<p>1 Q. Can you bracket when that was?</p> <p>2 A. It's pretty tough to say. As long as they were accepting responsibility in repairing them, I really didn't complain much. The frequency was, you know, kind of tough.</p> <p>7 And trying to get a 8 truck fixed in a reasonable amount of 9 time was sometimes a problem where I 10 would call Harry and say, Okay, Harry, 11 where do we go? And he would try to 12 find us a place to get the truck fixed 13 in short order. That was his job.</p> <p>14 But when all of a sudden 15 we have two trucks down, three trucks 16 down, four trucks down, I believe that 17 was by 2000 -- late 2002, mid 2002, just 18 an estimate, but now it was a concern, 19 and that's when they denied a claim and 20 we were in trouble.</p> <p>21 Q. Let me ask you this. You mentioned 22 dispatchers. Do the dispatchers at 23 Trans-Spec, in order to do their job, 24 have some type of document in front of</p>

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<p>1 them that lists out all of the trucks 2 that they are going to be -- all the 3 trucks that might be dispatched for work 4 on a particular day?</p> <p>5 A. Yes.</p> <p>6 Q. And do those forms that the dispatchers 7 use identify Trans-Spec trucks that are 8 out of service on that day?</p> <p>9 A. What a coincidence. Yes.</p> <p>10 Q. So if I wanted to know specific days 11 when particular trucks were out of 12 service, I could learn that by looking 13 at those dispatcher forms, if they are 14 still in existence, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And has Trans-Spec kept those dispatcher 17 forms for the last several years?</p> <p>18 A. Yes.</p> <p>19 Q. Where are they located?</p> <p>20 A. 22 Eskow Road.</p> <p>21 Q. Are they located in the storage trailer 22 there, or are they located somewhere 23 else?</p> <p>24 A. No. They are on the dispatch system.</p>	<p>1 dispatcher forms?</p> <p>2 A. Or just have them print it out.</p> <p>3 Q. Well, whether you are looking at them on 4 the screen or getting them printed out, 5 that would be the easiest and most 6 effective way to know exactly when those 7 trucks were out of service, correct?</p> <p>8 A. Absolutely.</p> <p>9 Q. Those forms wouldn't tell you why they 10 were out of service, but they would tell 11 you whether they were out of service or 12 not, right?</p> <p>13 A. Yes.</p> <p>14 Q. I understand that in June of 2004, you 15 attended a meeting at Southworth 16 Milton's place of business in Milford, 17 Massachusetts that was attended by 18 yourself and maybe some other people 19 from Trans-Spec and some people from 20 Caterpillar and some people from 21 Southworth. Do you remember that 22 meeting?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Was that the first meeting that you had</p>
230	232
<p>1 Q. So they are actually electronically 2 stored?</p> <p>3 A. Yes.</p> <p>4 Q. How far back do those records exist?</p> <p>5 A. 1996.</p> <p>6 Q. So for each day between the day in early 7 2000 when these trucks went into service 8 up until today, there would be a 9 dispatcher form that would tell us which 10 of the trucks was in service or out of 11 service on that day, correct?</p> <p>12 A. Yes. That's correct.</p> <p>13 Q. What would be involved in printing out 14 those forms?</p> <p>15 A. Not much.</p> <p>16 Q. It would be an easy thing to do?</p> <p>17 A. Yes.</p> <p>18 Q. As you sit here today, you probably 19 can't tell me the specific days when 20 each of these 22 Sterling trucks were 21 out of service, can you?</p> <p>22 A. No. I can't.</p> <p>23 Q. Would the best way of getting that 24 information be by looking at those</p>	<p>1 related to these trucks and engines with 2 people who were actually Caterpillar 3 employees as distinct from 4 Southworth-Milton employees?</p> <p>5 MS. REIMER: Objection.</p> <p>6 A. Yes.</p> <p>7 Q. Before that meeting, had you had any 8 conversation with people who were 9 actually Caterpillar employees as 10 distinct from Southworth-Milton 11 employees about these trucks or engines?</p> <p>12 A. I really never knew the difference.</p> <p>13 Q. Before that meeting, you had had 14 conversations about these trucks and 15 engines with Mr. Calderbank and Mr. 16 Cardoza, right?</p> <p>17 A. Amongst others, yes.</p> <p>18 Q. Who are the others?</p> <p>19 A. There was a fellow in a wheelchair.</p> <p>20 Q. What was that fellow's name?</p> <p>21 A. I really don't recall.</p> <p>22 Q. Where did you have a conversation with 23 him?</p> <p>24 A. I seen him a few different -- once in</p>

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1 Milton. Once on my property. There was a fellow named Gary Blood.	1 Mr. Guidotti and Al Cardoza and someone else who you can't --
2	2
3 Q. You mentioned him earlier?	3 A. Bill Wicher.
4 A. Right.	4 Q. -- you can't recall from SMI, Mr. Bumpus
5 Q. Anybody else?	5 and Bob from Sterling and also Mr.
6 A. There was -- there were plenty of others, but one time here and one time there and...	6 Wicher?
7	7 A. Yes.
8	8 Q. Bill Wicher?
9 Q. Can you name any of them?	9 A. Bill Wicher from Minuteman Trucks.
10 A. I really -- I'm not the greatest on names.	10 Q. Anybody else there?
11	11 A. I believe that was it.
12 Q. Now, returning to this meeting in June 2005, you attended it and who else from Trans-Spec attended it?	12 Q. Did anyone participate by telephone?
13	13 A. No.
14	14 Q. Do you remember what time of the day the meeting was?
15 A. Robert Barton.	15
16 Q. Anybody else?	16 A. I really don't. I'm picturing mid-morning.
17 A. From Trans-Spec, no.	17
18 Q. Who else was present at that meeting?	18 Q. Do you remember how long the meeting lasted?
19 A. Troy. I really can't recall his last name. He was from Caterpillar.	19
20	20 A. An hour, hour and a half.
21 Q. Guidotti, or something like that?	21 Q. Did you make any notes during the meeting?
22 A. Something like that.	22
23 Q. I am not sure I am pronouncing it right.	23 A. No. I have -- Bob did.
24 But his first name was Troy and he was	24 Q. Mr. Barton made notes?
234	236
1 from Caterpillar?	1 A. Yes.
2 A. Yes.	2 Q. Are those notes still in existence?
3 Q. Did he give you a card?	3 A. I believe, yes.
4 A. He did.	4 Q. Are they handwritten notes?
5 Q. It said Caterpillar on it?	5 A. With Bob I'm sure he put them in type.
6 A. Oh, yeah.	6 He is pretty good.
7 Q. Who else was at the meeting?	7 Q. Are these notes that were made at the meeting itself?
8 A. Al Cardoza from Southworth. There was somebody else there from Southworth.	8
9	9 A. Yes.
10 A. There was Mike Bumpus.	10 Q. So these aren't documents that were prepared in anticipation of the meeting?
11 Q. Who is Mike Bumpus?	11
12 A. He is the district rep for Sterling.	12 A. No.
13 Q. Who else was there?	13 Q. Did you take to that meeting any documents to use at the meeting?
14 A. I believe he is with Sterling, yes.	14
15 Then there was another rep from Sterling.	15 A. Yes.
16	16 Q. Were those documents that have now been marked Exhibits 9 through 30?
17 Q. You don't remember his name?	17
18 A. I will think of his name. Something like Bob White or Bob.	18 A. I believe so.
19	19 Q. They were in some sort of notebook at that time, right?
20 Q. Bob, someone from Sterling?	20
21 A. Yes. I have been dealing with him forever because he was with Freightliner prior to being with Sterling.	21 A. Yes.
22	22 Q. Did you take any additional documents to that meeting?
23	23
24 Q. Other than yourself and Mr. Barton and	24 A. I don't believe I did. I think that's

	237		239
1	what we had.	1	was to make this go away, and we just
2	Q. Did anyone at that meeting supply you or	2	didn't want to hurt anybody. We just
3	Mr. Barton with any documents during the	3	wanted our trucks fixed, be reimbursed
4	course of the meeting?	4	for what we had spent and basically get
5	A. When a question was asked, the fellow	5	a wholesale price on a truck and an
6	that had all the information was Al	6	engine, or we discussed it anyway.
7	Cardoza. He had every history from	7	
8	every truck I had ever owned right back	8	We got out of it they
9	from day one.	9	are going to fix the trucks. And Troy
10	Q. He had a large volume of documents with	10	basically confirmed what we were being
11	him?	11	told by the Milton employees that,
12	A. I think he -- I don't know if he had it	12	historically, Caterpillar will make this
13	on his Palm Pilot. I really don't know.	13	up to us. And the term that Troy used,
14	But he opened up a book, and any	14	for the first time I heard at that
15	question that was asked he read off on	15	meeting, was that Caterpillar will make
16	this date and this date, this was done,	16	you whole.
17	and so on.	17	
18	Q. Did Mr. Cardoza supply you or Mr. Barton	18	So we left feeling very
19	with any of the documents that he was	19	confident that we felt great. This
20	looking at?	20	thing is going to go away, and we are
21	A. No.	21	going to be back where we once were with
22	Q. When you left that meeting with Mr.	22	Caterpillar by our side and we would be
23	Barton, did you take any documents away	23	happy again.
24	with you?	24	Q. Did you ask Mr. Guidotti what he meant
	238		240
1	A. No. Just our own book.	1	No.
2	Q. Give me your best memory of what	2	Did he explain what he meant by that?
3	happened at that meeting and who said	3	Financially whole is what we were
4	what to whom?	4	looking for, and we believed and so did
5	A. Ed Blake is the other guy from Sterling.	5	the Sterling employees believed that's
6	I always do that.	6	what he meant, also.
7	Q. His first name wasn't Bob, it was Ed?	7	Tell me exactly what Mr. Guidotti said
8	A. No, it was Ed. Close, though. It only	8	in the part of this conversation where
9	has a couple of letters in it.	9	he used that phrase.
10	Q. Tell me what happened in the meeting and	10	There were a lot of things said. That
11	who said what to whom?	11	is the one thing that stuck in my mind,
12	A. Everyone was pretty cordial. They	12	of course, because that was the most
13	wanted to take care of our problems, and	13	important statement made in the whole
14	I believe they did. And Troy said, We	14	meeting.
15	are going to start fixing the trucks or	15	Other than those words, do you remember
16	we are going to see about fixing the	16	the context, the sentence, the
17	trucks. That's what he said.	17	discussion that those words were stated
18	At the time, we wanted	18	in?
19	to get new trucks, so we were talking	19	That meeting wasn't as important as the
20	about can Caterpillar help us out. If	20	next meeting.
21	we traded these trucks, if we sold these	21	I'm not interested in talking right now
22	trucks outright, could we get a discount	22	about the next meeting. I'm trying to
23	on new engines? Sterling was there.	23	understand what was actually said at the
24	Could we get -- what we were looking for	24	June meeting. You reported some words.

<p>245</p> <p>1 the proposal of Sterling to help us 2 market the trucks we have. They have 3 access to, you know, probably a thousand 4 truck lots owned by Freightliner which 5 are -- they have a name for them. 6 Select. Select Truck Centers are owned 7 by Freightliner -- and maybe spread them 8 out across the country, two here, two 9 there and what have you, and sell us 10 Caterpillar engines at a really good 11 price and sell us a Sterling truck at a 12 really good price. And we needed them 13 by a certain time so that we could meet 14 our contracts the following winter.</p> <p>15 Q. What did Mr. Bumpus and Mr. Blake 16 respond to all of that?</p> <p>17 A. They couldn't get engines.</p> <p>18 Q. What do you mean they couldn't get 19 engines?</p> <p>20 A. They were willing. They couldn't get 21 engines. Caterpillar wouldn't bend one 22 inch. They told us we could have 23 Caterpillar engines by like February or 24 something like that. They were all</p>	<p>1 would be correct.</p> <p>2 Q. The first meeting was there any 3 discussion specifically of the terms of 4 the extended service contract that you 5 had obtained way back when Trans-Spec 6 took delivery of these trucks?</p> <p>7 A. No.</p> <p>8 Q. Was there any discussion of what that 9 covered and what it didn't cover?</p> <p>10 A. No.</p> <p>11 Q. So that you just didn't talk about that 12 document at the meeting, correct?</p> <p>13 A. Correct.</p> <p>14 Q. You didn't talk about the Caterpillar 15 limited warranties with respect to these 16 engines, correct?</p> <p>17 A. It wasn't that kind of a meeting.</p> <p>18 Q. Then there was a second meeting, and 19 that occurred in August 2004?</p> <p>20 A. That sounds good.</p> <p>21 Q. Is it your memory that it was in August?</p> <p>22 A. My memory is it was either July or 23 August.</p> <p>24 Q. That meeting also was at</p>
<p>246</p> <p>1 booked up.</p> <p>2 Q. What about trucks with different kinds 3 of engines other than Caterpillar 4 engines, could they get those?</p> <p>5 A. Could they have gotten those?</p> <p>6 Q. Did you discuss with them getting those?</p> <p>7 A. No. Not really.</p> <p>8 Q. Why not?</p> <p>9 A. It wouldn't help my problem.</p> <p>10 Q. What else was discussed at that meeting?</p> <p>11 A. You know, we had two meetings, and I'm confusing some things possibly being said at the second meeting. They are real close together. The same people were there except I don't think Bumpus and Ed Blake were at the second one, but Steve Schoening was.</p> <p>12 Q. I'm trying to --</p> <p>13 A. What I'm getting at is the events, there's a little bit in each meeting and I really -- I possibly could be getting some confused between the two, and I'm not sure if I am or not. They were almost combined meetings, so my answers</p>	<p>248</p> <p>1 Southworth-Milton in Milford?</p> <p>2 A. I believe it was.</p> <p>3 Q. Was Mr. Guidotti there?</p> <p>4 A. We were in a smaller office. I still believe it was there, though. Yes, he was there.</p> <p>5 Q. Mr. Schoening was there?</p> <p>6 A. Yes.</p> <p>7 Q. That is S-C-H-O-E-N-I-N-G.</p> <p>8 A. Did Mr. Schoening give 9 you a card?</p> <p>10 A. Yes.</p> <p>11 Q. Had you met Mr. Schoening before?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Had you spoken with Mr. Schoening 14 before?</p> <p>15 A. No. I don't believe so.</p> <p>16 Q. Al Cardoza was there, right?</p> <p>17 A. Yes.</p> <p>18 Q. And you and Mr. Barton?</p> <p>19 A. Yes.</p> <p>20 Q. Other than Cardoza, was anyone else from</p> <p>21 A. Yes.</p> <p>22 Q. Southworth-Milton there?</p> <p>23 A. I don't believe so.</p>

249	251
1 Q. No one from Sterling was there?	1 "We have got to get you rental trucks."
2 A. No.	2 And I said, "I can't. I don't think I
3 Q. What about Bill Wicher, was he there?	3 can get rental trucks."
4 A. I believe he was there.	4 Q. He responded what?
5 Q. Was anyone else at that meeting?	5 A. He didn't.
6 A. I don't think so.	6 Q. What was the discussion on the subject
7 Q. Did you and Mr. Barton bring any	7 of getting your trucks or Trans-Spec's
8 documents to that meeting?	8 trucks repaired more quickly? What was
9 A. I believe we did.	9 that discussion?
10 Q. Were they the same documents that you	10 A. He looked at AI to utilize the shop, you
11 had taken to the earlier meeting?	11 know, fixing a couple of trucks at once
12 A. Yes. And some things added to it	12 possibly in the shop. We had ten or
13 probably.	13 eleven down at that meeting. And they
14 Q. What had been added to it?	14 were fixing them, but they would take
15 A. I really don't know. Some more of the	15 two weeks to fix them or sometimes a
16 same.	16 month when they couldn't get a part.
17 Q. Did you take any notes at that meeting?	17 The truck with the bad
18 A. No.	18 engine, that truck was denied warranty
19 Q. Did Mr. Barton take any notes at that	19 over a year prior to us putting an
20 meeting?	20 engine in and buying. We paid \$20,000
21 A. I'm not sure. He usual does, though.	21 for an engine and we put it in.
22 Q. Have you seen any of these notes since	22 And then that flywheel
23 the meeting?	23 housing failed and Southworth said, Gee,
24 A. No. I have spoken to Bob Barton a few	24 we don't warranty -- Caterpillar doesn't
250	252
1 times. Not recently about the meeting,	1 warranty that engine, so you have to
2 no.	2 give us back the old engine and take
3 Q. Mr. Barton still works for Trans-Spec?	3 your new engine out and we'll fix your
4 A. Yes.	4 old engine.
5 Q. Did anyone supply you with any documents	5 So here I am I still
6 at that meeting?	6 have a new engine. It is actually
7 A. I don't believe so.	7 \$22,000 sitting on a stand with nothing.
8 Q. How long did that second meeting last?	8 It was just thrown-away money because we
9 A. 45 minutes maybe, half hour, hour.	9 were denied warranty.
10 Q. After you all got together in the	10 Q. You talked with Mr. Schoening about
11 meeting room, who was the first to speak	11 getting work done on the trucks more
12 other than simply introductions?	12 quickly. Mr. Schoening stuck out his
13 A. Steve Schoening.	13 hand and said that they would make you
14 Q. What did Mr. Schoening say?	14 whole?
15 A. He said, "Hello, I'm Steve Schoening."	15 A. He quoted what Troy had said, and Troy
16 He said, "I'm just here to tell you,"	16 said the same thing at the last meeting.
17 with his hands stuck out, "that this is	17 "This is not your fault."
18 absolutely not your fault and	18 Q. What else did Mr. Schoening say at the
19 Caterpillar will make you whole."	19 meeting in August?
20 Q. Then what did he say?	20 A. The only important things he said was
21 A. When the meeting was over, everybody	21 that and about getting us rental trucks.
22 talked a little bit about the problems,	22 It was such a positive meeting. We
23 and he just wanted to get the trucks	23 didn't say much. Everybody else said it
24 fixed at a faster rate. And he said,	24 for us and told us exactly what we

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11836-RCL

TRANS-SPEC TRUCK SERVICE, INC.)
d/b/a TRUCK SERVICE,)
Plaintiff)
vs.)
CATERPILLAR INC.)
Defendant)

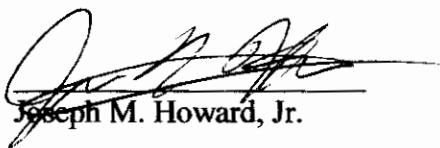
**AFFIDAVIT OF JOSEPH M. HOWARD, JR.,
IN SUPPORT OF PLAINTIFF'S MOTION TO AMEND**

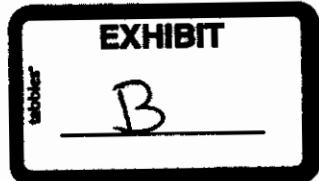
I, Joseph M. Howard, Jr., state:

1. I am the President of Trans-Spec Truck Service, d/b/a Truck Service ("Trans-Spec").
2. Trans-Spec initiated this litigation only after years of negotiation with Caterpillar Inc. ("Caterpillar") and its local agent and distributor, Southworth Milton, Inc. ("Milton"), failed to remedy its losses.
3. Trans-Spec declined to file suit during this time because it relied on assurances that Caterpillar would compensate it for the damages it suffered.
4. When Caterpillar repeatedly failed to make Trans-Spec whole for the damages it suffered, Trans-Spec reluctantly commenced this litigation on August 23, 2004.

SIGNED UNDER THE PENALTIES OF PERJURY THIS ____ DAY OF JUNE, 2005.

00922169


Joseph M. Howard, Jr.



1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
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1 ADDITIONAL DEPOSITION OF ROBERT G.
2 BARTON, JR., witness called on behalf of the
3 Plaintiff, pursuant to Federal Rule of Civil
4 Procedure, before Carolyn J. Rogers, certified
5 stenographer and Notary Public, in the City
6 of Boston, Massachusetts, on the 17th day of May
7 2005, Boston, Massachusetts, in Boston, Massachusetts,
8 on Tuesday, May 17, 2005, commencing at 9:00 a.m.

1 C. J. REPORTING
2 450 Atlantic Avenue, Suite 800
3 Boston, Massachusetts 02110
4 (617) 409-9090
5 www.cjreporting.com

1 PROCEEDINGS

2 MR. GRUNERT: The witness is going to read
3 and sign the transcript under the pains and penalties
4 of perjury, but notarization of the signature is
5 waived. Objections except as to the form of the
6 question are reserved until the time of trial, and
7 motions to strike are reserved until the time of
8 trial.

9 THE VIDEOGRAPHER: We are now on the
10 record. The date is May 17, 2005. The time is
11 approximately 9:34 a.m. We are located in the
12 offices of Campbell, Campbell, Edwards and Conroy in
13 Boston, Massachusetts. The defendant in the case of
14 Trans-Spec Truck Services, Incorporated versus
15 Caterpillar, Incorporated, Civil Action No.
16 0411836RCL, will take the audiovisual deposition of
17 Mr. Robert Barton. My name is William Barton, no
18 relation to the defendant, of In-Court Technologies,
19 Boston, Massachusetts, and I am the videographer for
20 this deposition. The stenographer is Carolyn J.
21 Rogers of C. J. Reporting. At this time the
22 attorneys will introduce themselves for the record.

23 MR. GRUNERT: My name is John Grunert of
24 the firm of Campbell, Campbell, Edwards and Conroy.

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PAGE 5

1 APPEARANCES:

2 JOHN A. K. GROBERT, ESQUIRE
3 Campbell, Campbell, Edwards & Conroy
4 Boston, Massachusetts
5 (617) 241-0000/FAX: (617) 241-0115
6 On Behalf of the Plaintiff, Caterpillar, Inc.
7 CHRISTIAN G. SAMITO, ESQUIRE
8 Boston, Boston, LLP
9 Two Congress Lane
10 Boston, MA 02110
11 (617) 409-9090/FAX: (617) 409-4500
12 On Behalf of the Plaintiff
13 Trans-Spec Truck Services, Inc.

14 ALSO PRESENT:

15 WILLIAM BARTON, VIDEOPROPHET
16 In-Court Technologies

1 I represent the defendant Caterpillar, Inc.

2 MR. SAMITO: Christian G. Samito of the
3 firm Donovan and Hatem, representing Mr. Barton and
4 Trans-Spec Truck Service, Inc.

5 THE VIDEOGRAPHER: The stenographer will
6 now swear in the witness.

7 ROBERT G. BARTON, JR.,
8 a witness called on behalf of the Defendant, having
9 first been satisfactorily identified by the
10 production of his driver's license and duly sworn by
11 the reporter/notary public, testifies and says as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. GRUNERT:

15 Q. State your full name for the record,
16 please?

17 A. Robert G. Barton, Jr..

18 Q. What is your date of birth, Mr. Barton?

19 A. 1/1/49.

20 Q. Where do you live?

21 A. 89 Central Street, West Boylston,
22 Massachusetts.

23 Q. Are you married?

24 A. Yes.

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PAGE 6

1 INDEX

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10	11	12	(Mr. Samito)	145, 194

1 EXHIBITS

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4	5	6	Photocopy of Electronic Evidence	1
7	8	9	Photocopy of Report 2001-2004	10
10	11	12	Color copies of Photocopies	62
13	14	15	Photocopies of Photo copy	134
16	17	18	Photocopies of Photocopy	136
19	20	21	Color copies of Photocopy	140

1 Q. Do you have children?

2 A. Yes.

3 Q. Are you employed by Trans-Spec Truck

4 Service, Inc.?

5 A. Yes, I am.

6 Q. How long have you been employed by

7 Trans-Spec?

8 A. Since October of 2003.

9 Q. Who was your employer before October of

10 2003?

11 A. Santa Fuel.

12 Q. What was the first name?

13 A. Santa.

14 Q. As in Santa Claus?

15 A. As in Santa Claus.

16 Q. Gotcha.

17 A. Bridgeport, Connecticut.

18 Q. Is Santa Fuel -- or was Santa Fuel owned

19 or affiliated in any way with Joseph Howard?

20 A. No.

21 Q. Was it affiliated in any way with

22 Trans-Spec?

23 A. No.

24 Q. Is it accurate that you played no role in

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EXHIBIT

<p>1 Q. Do you have an understanding or a 2 recollection that this is when Mr. Cardoza said they 3 had certain fixes or made a suggestion regarding 4 dowels?</p> <p>5 A. He may have been suggesting them at that 6 time, I believe.</p> <p>7 Q. What did Mr. Cardoza say?</p> <p>8 A. I believe this was in the conversation 9 involving the setscrews so the dowels wouldn't back 10 out.</p> <p>11 Q. Did Mr. Cardoza say that he was consulting 12 with others at this time?</p> <p>13 A. They were -- he was working with 14 Caterpillar engineering, trying to find a solution is 15 what he would tell me.</p> <p>16 Q. How often did Mr. Cardoza come to 17 Trans-Spec's facilities to inspect?</p> <p>18 A. I think I saw him there about five times, 19 maybe more, maybe less.</p> <p>20 Q. Did you see him at Tri State?</p> <p>21 A. Yes.</p> <p>22 Q. The tapping and capping work that you 23 referred to earlier by the machine shop, was this one 24 of the fixes suggested by Cardoza?</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p style="text-align: center;">PAGE 151</p> <p>1 A. I'm not sure, but probably. 2 Q. Getting back to the calendar entries for 3 June 30, 2004, it says "CAT-Milford pick up 8000." 4 To what does that refer?</p> <p>5 A. That means the tractor was done. 6 Q. Was that a flywheel repair?</p> <p>7 A. Yes, it was. 8 Q. We don't need that anymore. You can -- 9 And then on July 6, 2004, there's an 10 entry "CAT-Milford with 8000." Was this the dyno 11 test?</p> <p>12 A. Yes, it was. 13 Q. What truck was used for the dyno test?</p> <p>14 A. 8000. 15 Q. You earlier testified that you asked about 16 what would happen with the data that was gathered, 17 and you said that you learned that it was going to be 18 turned over to engineering. Whose engineering?</p> <p>19 A. Caterpillar's. 20 Q. Did you ever learn what Caterpillar's 21 engineering came up with, based on that data?</p> <p>22 A. No. 23 Q. Who did you ask?</p> <p>24 A. Al Cardoza. C. J. REPORTING 978.409.9090 www.cjreporting.com</p>
<p style="text-align: center;">PAGE 152</p> <p>1 A. Yes, it was. 2 Q. Who paid for the work performed by this 3 machine shop?</p> <p>4 A. I believe Trans-Spec had to pay for a few 5 of them. The ones that were done at Freightliner, 6 I'm sure -- I don't know who paid for them, but I'm 7 sure somebody did.</p> <p>8 Q. The entry for Saturday May 8, 2004, "Shop 9 check on how many flywheel have been done, 15," to 10 what does this entry refer?</p> <p>11 A. I probably asked one of the mechanics to 12 give me a list of how many flywheels had been done.</p> <p>13 Q. Done in total or in-house?</p> <p>14 A. No. In total.</p> <p>15 Q. The June 29, 2004, entry, "CAT ready for 16 dyno Thursday," to what does this entry refer?</p> <p>17 A. This is the day that they wanted the truck 18 down to Caterpillar. They had notified me they 19 wanted to do the dyno on Thursday.</p> <p>20 Q. Was this as a result of the June meeting 21 with Al Cardoza and Troy Guidotti?</p> <p>22 A. I believe so, one of the meetings.</p> <p>23 Q. Down at the bottom of the page, it says, 24 "7400F Freightliner not fixed." What was wrong with C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p style="text-align: center;">PAGE 155</p> <p>1 Q. Could the statements in the Trans-Spec 2 answers to interrogatories based on possible theories 3 as to what was causing the engine problems, could 4 that have been said to someone other than you at 5 Trans-Spec?</p> <p>6 MR. GRUNERT: Object to the form.</p> <p>7 A. Very possibly.</p> <p>8 Q. Turning to August 9, 2004, in the calendar 9 entries, to what does this -- oh, I'm sorry, you're 10 not there yet. There's one entry on this page: 11 "CAT-Milford, Troy, Al." To what meeting does this 12 refer?</p> <p>13 A. I believe that was a second meeting we had 14 there.</p> <p>15 Q. This was the one that involved --</p> <p>16 A. Schoening, Al, myself, Jay, I believe will 17 Witcher.</p> <p>18 Q. And what did Schoening say about 19 Trans-Spec's problems with the engines?</p> <p>20 A. That they would make us whole. It wasn't 21 our -- it wasn't Trans-Spec's problem.</p> <p>22 Q. And what did you do, if at all, walk away 23 from Mr. Schoening after August 9, 2004, after this 24 meeting?</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>
<p style="text-align: center;">PAGE 153</p> <p>1 Truck 7400?</p> <p>2 A. I believe it was at one of the 3 dealerships, and it was just sitting there. They 4 hadn't gotten it in yet.</p> <p>5 Q. Do you remember how long it had been down?</p> <p>6 A. I believe it was over a week or so, 7 because they only could get one in at a time.</p> <p>8 Q. Looking at Howard Exhibit 12, do you 9 recognize that page? It's the second page of Howard 10 Exhibit 12.</p> <p>11 A. Yes.</p> <p>12 Q. What is this?</p> <p>13 A. This is just a little writeup I had on the 14 front of -- I was trying keep track of where these 15 trucks were going.</p> <p>16 Q. You prepared that?</p> <p>17 A. Yes.</p> <p>18 Q. Looking at your calendar entry for 19 June 29, 2004, and looking at second page of Howard 20 Exhibit 12, is June 29 the correct date for the 21 notation marked 9/29 in Howard Exhibit 12?</p> <p>22 A. Probably not.</p> <p>23 Q. Should that read "6/29" on the second page 24 of Howard Exhibit 12?</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p style="text-align: center;">PAGE 156</p> <p>1 A. After this meeting, the only one I talked 2 to was Al Cardoza to see what they came up with.</p> <p>3 Q. Did you ever call Schoening?</p> <p>4 A. I had put in a couple calls to him. I 5 never got a return call.</p> <p>6 Q. The next day, August 10, 2004, you earlier 7 testified about a truck breaking down in Connecticut 8 and needing to be towed back. Is that what this 9 refers to? I see, "10 CT".</p> <p>10 A. Yes, it is.</p> <p>11 Q. Did you call Mr. Guidotti regarding this?</p> <p>12 A. Yes, I did.</p> <p>13 Q. And is this when you had the conversation 14 with Mr. Guidotti?</p> <p>15 A. Yeah, I asked him. I asked him if he 16 would, you know, if he'd take care of the towing, if 17 he had any recommendations where we could get it 18 fixed.</p> <p>19 Q. So it was after the August 9 meeting, 20 then?</p> <p>21 A. Yes.</p> <p>22 Q. August 13, 2004, the last entry, "Al/CAT</p> <p>23 will extend service coverage till June 1, 2005, will 24 not put in writing." To what does this refer?</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>

<p>PAGE 157</p> <p>1 A. I went to Caterpillar to see -- I was in 2 Milford. I stopped at the Caterpillar office. Al 3 Cardoza came down to the foyer and met me. I asked 4 him what they had come up with. He told me that they 5 were going to extend our warranty to June 1st of 6 2005, and at that time, I asked him if he'd put that 7 in writing, and he told me no. 8 Q. Was your going down a result of the 9 August 9th meeting? 10 A. I was in the area, yes, and I wanted to 11 find out if we had some results. 12 Q. Who was present at that discussion? 13 A. It was just Al and myself in the front 14 foyer. 15 Q. September 7, 2004, there's an entry, "8300 16 flywheel, Milton advised Alan, Jim, need paperwork on 17 units done at their shop." 18 MR. GRUNERT: I'm sorry, what date? 19 MR. SAMITO: September 7, 2004, and it's 20 the entry next to 9/10. 21 A. I put a call in that I needed some 22 paperwork on these units, because what would happen 23 is, they would fix the units, and then the paperwork 24 would have to be forwarded to Caterpillar for C. J. REPORTING 978.409.9090 www.cjreporting.com </p>	<p>PAGE 160</p> <p>1 down. It didn't go in, because obviously they didn't 2 have people to work on it. The truck sat there a 3 week or so, and I couldn't get -- until Jim comes 4 back, you couldn't get anything done. So basically, 5 the truck sat there. They didn't start working on 6 it, collecting dust, and tied up. 7 Q. So the entry on September 7 in your 8 calendar means that you brought the truck down? 9 A. Uh-huh. 10 Q. 8300 down? 11 A. Uh-huh. 12 Q. Who's Jim Wood? 13 A. He's the service manager at MiltonCAT. 14 Q. You mean Jim Withrow? 15 A. Withrow, yeah, I'm sorry. 16 Q. So "Jim Withrow will be in end of week." 17 You didn't speak to him directly? 18 A. No, he was on vacation. I talked to his 19 assistant, Andy, who -- 20 Q. Do you know Andy's last name? 21 A. No, I don't. 22 Q. Why was Trans-Spec sending its trucks to 23 various repair facilities? 24 A. Because we didn't have enough trucks to C. J. REPORTING 978.409.9090 www.cjreporting.com </p>
<p>PAGE 158</p> <p>1 approval. So in other words, I would pick up a 2 truck, and I had no record of what was done, when it 3 was done, or whatever, because it had to go to 4 Caterpillar first to be approved. Then, it would 5 come back to Milton, I guess. 6 Q. You said you called. So the conversation 7 took place by phone? 8 A. Uh-huh. 9 Q. Who called who? Who initiated the call? 10 A. I did. 11 Q. And does "Jim" refer to Jim Withrow? 12 A. Yes. He's the service manager. 13 Q. Was it routine for you not to receive all 14 of the paperwork on the repairs being done? 15 A. I never received any paperwork. All their 16 paperwork would have to go forwarded to Caterpillar 17 for approval. Then it would come back, and from time 18 to time I'd have to call Jim, get together with him, 19 and then he would make me copies. 20 Q. Has that caused any problems in terms of 21 Trans-Spec's recordkeeping on the problems? 22 A. Yes. There's no way of really tracking 23 how long the truck's been tied up down there other 24 than trying to go through our dispatch sheet and see C. J. REPORTING 978.409.9090 www.cjreporting.com </p>	<p>PAGE 161</p> <p>1 make the delivery. We were trying to get them fixed 2 as fast as possible. Freightliner could only handle 3 one or two at a time, and then Caterpillar could 4 only -- they had one or two bays they were using for 5 us, but they'd let our trucks sit and they'd get more 6 trucks in. They're just busy. They're just 7 overwhelmed with repairs. 8 Q. September 15, 2004, the second entry, 9 "7400 not in at Freightliner. Talked with Rob. Will 10 be in soon at Shrewsbury." To what does that refer? 11 A. Another case of the truck sitting outside. 12 I felt it was promised to get in there and they're 13 going to be working on it. Obviously, they didn't 14 get it in there on time. It was still just sitting 15 out there collecting dust. 16 Q. From your calendar entry September 8, does 17 that indicate that 7400 was at Tri State since 18 September 8 and September 15 it still hadn't been -- 19 A. Correct. 20 Q. Who is Rob? 21 A. He is the service manager at Freightliner. 22 Q. Is this Rob Lynds? 23 A. Yes. 24 Q. September 21, 2004, there's an entry, C. J. REPORTING 978.409.9090 www.cjreporting.com </p>
<p>PAGE 159</p> <p>1 how long a truck's been down. Only Caterpillar has 2 that exact record of when it was there and when it 3 was released. 4 Q. Does this entry mean that 8300 was picked 5 up or brought for repair on this day? It says 8300. 6 Does that mean it's -- 7 A. It means it obviously must have been -- 8 the flywheel was repaired. We had the truck back. I 9 just didn't have the paperwork. 10 Q. The next day, September 8, 2004, "7400 to 11 Freightliner." What does this entry mean? 12 A. This means we brought the truck to 13 Freightliner to have the flywheel -- the flywheel was 14 cracked on it and the front cover was leaking. In 15 other words, they had an opening to get it in and fix 16 it. 17 Q. Well, if you turn a few pages to 18 September 14, 2004, the first entry is "8300 still 19 not in Milton. Jim Wood will be in end of week. 20 Truck just sitting yard." What does it mean that 21 Truck 8300 was just sitting in the yard? 22 A. I had brought the truck down there 23 probably a week prior. Jim was on vacation. The 24 truck was supposed to go in the night I brought it C. J. REPORTING 978.409.9090 www.cjreporting.com </p>	<p>PAGE 162</p> <p>1 "E-mailed CAT about TOPP repair problem, received 2 e-mail back saying someone from Southworth-Milton 3 would be in touch. Al Cardoza said program no longer 4 exists." What is TOPP, T-O-P-P? 5 A. I went onto Caterpillar's website and I 6 saw they had a warranty program. So I e-mailed them 7 some information on it, and they sent me back an 8 e-mail stating someone from Milton would be in touch 9 with me. 10 Q. When you say "warranty" -- just to take 11 this a little slower, when you say "warranty," was 12 this a new warranty? Was this a warranty extension? 13 A. This is an extended warranty. 14 Q. Okay. And you found it on the website. 15 How did you e-mail Caterpillar? 16 A. From my laptop. 17 Q. Whom did you e-mail? 18 A. To Caterpillar. 19 Q. But did it have an e-mail address? 20 A. Yes, it had an e-mail, www.Caterpillar. 21 Q. Did you input, as sometimes 22 organizations -- 23 A. My name -- 24 Q. Did you input it into a form that then C. J. REPORTING 978.409.9090 www.cjreporting.com </p>

1 channeled it to --
 2 A. (Witness nods head.)
 3 Q. And did you receive a personal response or
 4 was it an automated response?
 5 A. I received a response that someone from
 6 Southworth-Milton would be in touch with me.
 7 Q. And then who responded from
 8 Southworth-Milton?
 9 A. I received an e-mail from Jim Withrow from
 10 Southworth-Milton. Prior to that, I called Al
 11 Cardoza about it, and Al Cardoza told me the program
 12 no longer existed. And then I then -- the next day I
 13 received an e-mail from Jim Withrow explaining to me
 14 they have what's called an Advantage program for an
 15 additional 250,000 miles, or 200 miles.
 16 Q. The next entry, "Freightliner re 7400
 17 doing front structure first." Does that mean 7400
 18 was still at Tri State during this time?
 19 A. I believe so.
 20 Q. So 7400 was in since September 8?
 21 A. Yes.
 22 Q. The next entry refers to East River.
 23 "Billy told East River can't do work." What is East
 24 River?
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1 A. It's an oil company in Connecticut that
 2 we -- that Trans-Spec does transportation for.
 3 Q. Why did Trans-Spec -- I'm assuming Billy
 4 is Billy Howard?
 5 A. Yes. Billy is the dispatcher.
 6 Q. Why did Billy at Trans-Spec say that
 7 Trans-Spec can't do work for East River?
 8 A. I told him he didn't have the equipment to
 9 do it now. We had too many trucks down. And to be
 10 fair with the customer and let him know that we just
 11 couldn't handle it.
 12 Q. Skipping one entry down to where it says,
 13 "Jim at CAT said bolts were covered. Jay and Bob
 14 present." Who is Jim?
 15 A. Jim is the service manager, Withrow.
 16 Q. Jim Withrow?
 17 A. Withrow, yes.
 18 Q. Where did this conversation take place?
 19 A. Somebody had mentioned something about
 20 bolts weren't covered or something, and I -- when we
 21 went to pick up a truck, I says, "Jim what's the
 22 story? Are the bolts covered or not?" He says, "Of
 23 course they're covered."
 24 Q. The last entry, "Gary check for flywheel
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1 cracks." Who is Gary?
 2 A. He is one of the mechanics at night.
 3 Q. What did you ask him to do?
 4 A. I asked him to check the trucks over there
 5 and make sure what we had, that if we had anything
 6 that was broken, because they were coming apart too
 7 frequently and so many of them.
 8 Q. Was this an occasional request that you
 9 made of mechanics?
 10 A. Quite often.
 11 Q. Why?
 12 A. Because we're trying catch them before
 13 they would disintegrate. We were trying to keep up
 14 with them, because, unfortunately, when the flywheel
 15 cracks, if you can catch it before it takes the block
 16 with it, it's less of a job. Unfortunately, most of
 17 them that crack, they take the right-hand -- the
 18 corner of the block.
 19 Q. So this was preventative maintenance or --
 20 A. Yes.
 21 Q. On September 30, 2004, it says "7400 back
 22 to CAT, exhaust leaking." Is that the 7400 that was
 23 out in early September?
 24 A. Yes.
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1 Q. And it had been repaired and it had to go
 2 back to Caterpillar for further repair?
 3 A. That's correct. I believe this vehicle
 4 sat at Freightliner so long that we finally ended up
 5 taking it to CAT because they had an opening. They
 6 fixed it. There happened to be an exhaust leak. We
 7 had to take it back.
 8 Q. It says "Dropped off parts for 8300."
 9 Does that mean that 8300 was still in the shop since
 10 your September 7th entry?
 11 A. Very possible. Obviously, they had a
 12 flywheel apart and before they put it back together,
 13 they noticed the clutch might have been bad, so we
 14 probably brought them out a new clutch. So when they
 15 were reassembling, they put the clutch in as well.
 16 Q. Are you familiar with the repair history
 17 of Truck 6100 in early October 2004?
 18 A. You'll have to refresh my memory.
 19 MR. SAMITO: Why don't we mark this.
 20 (Exhibit No. 6 marked for identification.)
 21 Q. I show you Barton Exhibit 6, which is a
 22 four-page packet of photographs, and I'll describe
 23 the pages. One is dated October 6, 2004, one
 24 photograph on the page. There's another page that
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1 has two photographs dated October 8, 2004, another
 2 page that has four photographs dated October 6, 2004,
 3 and a final page with four photographs dated
 4 October 15, 2004. Do you recognize where these
 5 pictures were taken?
 6 A. Yes.
 7 Q. Where?
 8 A. Freightliner in Shrewsbury, Massachusetts.
 9 Q. Who took them?
 10 A. I did.
 11 Q. Where these for Truck 6100?
 12 A. Yes.
 13 Q. Does this refresh your memory?
 14 A. Yes, it does.
 15 Q. Can you describe what happened in early
 16 October 2004 regarding repair of Truck 6100?
 17 A. I received a call from the Freightliner
 18 dealership that Al Cardoza had come out and inspected
 19 a truck and told the mechanics to put a new flywheel
 20 on it and put it back together and epoxy the block.
 21 Subsequently, I went up there. The
 22 mechanic did not feel that this was suitable. The
 23 owner of Freightliner also was very concerned as to
 24 the fact that if they put it back together without
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1 replacing the block, it would just break again. But
 2 this was their instructions that they received from
 3 Caterpillar, which some squawking was done, and it
 4 was finally fixed properly by putting a new block in
 5 it and a flywheel.
 6 Q. Who did the squawking?
 7 A. I believe I started doing the squawking,
 8 and I believe Jay Howard did some squawking also.
 9 Q. Who did you speak to regarding this issue?
 10 A. I think I believe I spoke with Al Cardoza.
 11 Q. Where did that conversation take place?
 12 A. On the phone.
 13 Q. What was the substance of that
 14 conversation?
 15 A. Why are you trying to take advantage of
 16 us? The thing is warranted. You're going to put
 17 something back together and it's going to break again
 18 because you're not doing it properly.
 19 Q. What did Mr. Cardoza say in response?
 20 A. I don't even recall. It was a very heated
 21 discussion. Because all I know is, they fixed it
 22 properly and -- due to the diligence of the
 23 Freightliner dealership being honest with us.
 24 Q. When you say "Freightliner," you
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1 consistently -- I should clarify for the record.
 2 **A. Tri State Shrewsbury.**
 3 Q. Okay. "October 12, 2004, talked with Jim
 4 at MiltonCAT re setting up inspection. Will let me
 5 know. Maybe can be done at night." What inspection
 6 does this refer to?
 7 **A. These were the inspections for the**
 8 **Advantage program, the extended warranty that**
 9 **Caterpillar had available. The cost to us was**
 10 **\$55,920, and the stipulation was that every truck had**
 11 **to be inspected by them. There was a certain**
 12 **criteria it had to meet so it would be able to be**
 13 **basically insured or warranted with the extended**
 14 **warranty.**

15 **Due to our many trucks that were**
 16 **broken down, I had to try to make arrangements where**
 17 **we would have trucks available to deliver the product**
 18 **and have the minimal trucks in being tied up. And**
 19 **Jim was working this out with me, and the original**
 20 **plan was to do an inspection at night, but it didn't**
 21 **work that way.**

22 Q. You earlier discussed language on the back
 23 of the sheet registering the serial numbers of the
 24 trucks with Al Cardoza. Do you recall when that

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1 conversation took place?
 2 **A. That was way back in October of 2003 when**
 3 **I first went there.**
 4 Q. That was in one of your first meetings
 5 with Mr. Cardoza?
 6 **A. Yes, that was at Truck Service when I**
 7 **first met him.**

8 Q. That was at the very first meeting with
 9 Mr. Cardoza?

10 **A. Yes, that's when I was introduced to him**
 11 **at the garage.**

12 MR. SAMITO: I have no more questions.

13 MR. GRUNERT: I'm going to have a few.

14 Just give me a minute.

15 REDIRECT EXAMINATION

16 BY MR. GRUNERT:

17 Q. Mr. Samito asked you about documents that
 18 Trans-Spec has related to these trucks beyond the
 19 ones that were included in Howard Exhibits 9 through
 20 30. You referred to documents that Trans-Spec keeps
 21 at 7 Cristo Lane. What documents related to the
 22 trucks does Trans-Spec keep at 7 Cristo Lane?

23 **A. I have no idea. Mostly mileage probably,**
 24 **anything to do with the way they run the office,**

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1 **receipts, payments.**

2 Q. When you said "mileage," what did you mean
 3 by that?

4 **A. Well, they had to keep track of mileage**
 5 **for fuel tax purposes. That is basically where the**
 6 **corporate office is.**

7 Q. Now, what kind of records recording
 8 mileage on the trucks are kept?

9 **A. Well, they have to claim so many miles for**
 10 **fuel tax purposes. I don't know exactly what kind of**
 11 **records are kept. There are some kind of records.**

12 Q. Are the mileage records generated
 13 annually?

14 **A. Couldn't tell you.**

15 Q. But there are mileage records that record
 16 the mileage on each of these trucks on particular
 17 dates, and those are kept at the 7 Cristo Lane
 18 office; correct?

19 **A. I don't know if they're on particular**
 20 **dates or if they're monthly, annually, quarterly. I**
 21 **really couldn't tell you.**

22 Q. Well, whether they're monthly or annually
 23 or quarterly, they're on a particular date; it's just
 24 you don't know how many dates per year; correct?

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1 **A. I have no idea.**

2 Q. And the best you can do is tell me that
 3 those are mileage records?

4 **A. I don't know what you'd call them. I'd**
 5 **say there has to be some kind of records so they can**
 6 **report their fuel use. So I would say they're**
 7 **mileage.**

8 Q. Now, the receipts that you referred to
 9 that are kept at 7 Cristo Lane, what did you mean by
 10 that?

11 **A. Let's say they buy a truck, they get a**
 12 **receipt; they buy a doughnut, they get a receipt.**
 13 **Any business gets receipts when they purchase things.**
 14 **So I would assume they would have receipts for items**
 15 **purchased, et cetera, et cetera.**

16 Q. So at 7 Cristo Lane, there are receipts
 17 evidencing Trans-Spec's receipt of the trucks
 18 involved in this case; correct?

19 **A. I would imagine, yes.**

20 Q. And there are receipts there evidencing
 21 Trans-Spec's receipts of other trucks that it may
 22 have received between 2000 and 2005; correct?

23 **A. I would imagine.**

24 Q. And you referred to payments. What did
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1 you mean by payments?

2 **A. Well, such if you paid to buy a flywheel**
 3 **housing, I'm sure there would be a receipt there of**
 4 **that.**

5 Q. Well, so when you said "receipts" and when
 6 you said "payments," were you referring to the same
 7 type of documents?

8 **A. Yeah, basically anything that money is**
 9 **expended for, I would assume you would get some type**
 10 **of receipt for it.**

11 Q. All right. So stored at 7 Cristo Lane
 12 there are mileage records for each of the trucks
 13 involved in this case, receipts evidencing the
 14 receipt of the truck, of each of those 22 trucks, and
 15 then there are additional receipts evidencing parts
 16 or components for those trucks that Trans-Spec
 17 purchased; correct?

18 **A. Parts, components, permits.**

19 Q. Will there be things such as scale tickets
 20 or weight tickets kept at the 7 Cristo Lane location
 21 evidencing the weights that these various trucks were
 22 pulling on various occasions?

23 **A. I really couldn't answer that question. I**
 24 **don't know.**

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1 Q. Other than the mileage records and the
 2 receipts that are kept at 7 Cristo Lane, what other
 3 records related to these trucks are kept at that
 4 location?

5 **A. Probably the fees for registration,**
 6 **overweight permits.**

7 Q. I'm sorry, I missed the first one?

8 **A. Overweight permits.**

9 Q. Overweight permits.

10 **A. Registrations.**

11 Q. Bear with me here. I've seen references
 12 to overweight permits. When does a common carrier
 13 such as Trans-Spec obtain an overweight permit?

14 **A. Every 12 months you have to have -- from**
 15 **the Massachusetts Department of Highways, you have a**
 16 **permit called an overweight permit. You also have to**
 17 **have an overweight permit to use the Massachusetts**
 18 **Turnpike. It's basically just another way of**
 19 **collecting money for the Commonwealth.**

20 Q. This is Massachusetts.

21 **A. Right.**

22 Q. The overweight; is there a particular
 23 weight specified by the Commonwealth that if you're
 24 going to operate a vehicle on the highways of the

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INTRODUCTION

Caterpillar's Extended Service Coverage for On-Highway Vehicle Engine Service Contract, herein referred to as "Service Contract", for new vehicles powered with Caterpillar engines is an important part of Caterpillar's continuing effort to provide Caterpillar Vehicle Engine Owners with superior value and product support. This service contract provides the Owner assurance against unexpected repair costs for covered component failures due to defects in materials or workmanship under normal use.

TERMS AND CONDITIONS

This service contract is available for new vehicles powered with Caterpillar Mid-Range and Heavy Duty On-Highway Vehicle engines, herein referred to as "new vehicle(s)". This service contract is only available for use within the continental boundaries of the United States and Canada.

Owner should purchase this service contract on the original delivery date of the new vehicle at a Caterpillar authorized dealer (herein referred to as "authorized dealer"). The applicable start mileage and date must be recorded on this Service Contract.

This service contract runs concurrently with the Caterpillar On-Highway Vehicle Engine Warranty and provides full components and labor coverage for covered component failures due to defects in Caterpillar materials or workmanship under normal use. Termination of this contract will occur when the time or mileage from the original delivery date exceeds the coverages as specified on this Service Contract.

Components listed below are covered under these programs except the applicable exclusions listed under Section VI, Exclusions & Limitations:

MID-RANGE EXTENDED SERVICE COVERAGE (ESC II)

C II for Mid-Range is available in two different deductibles:

Option 1: Caterpillar will pay 100% of the components and labor charges for covered failures, with no deductible charges.

Option 2: Caterpillar will pay 100% of the components and labor charges for covered failures, less a \$500 deductible charge per service visit.

Following components are covered under the Mid-Range ESC II: exhaust manifolds, studs, & gaskets, inlet air heater & gaskets, intake manifolds, cylinder head casting, exhaust/injector sleeves, cylinder head bolts, cylinder head gaskets, freeze plug, intake & exhaust valves, valve spring, insert guide, retainer, valve mechanism (including rocker arm, brackets, bridges, lobes, dowels, adjusting screws, nuts, shaft, & push tubes), valve cover & base, camshaft, camshaft bearings, camshaft lifter assembly (followers/clips), front covers & plates, front cover gaskets, front cover gears & power steering gear, flywheel housing, flywheel housing gasket, cylinder block casting, freeze plug, crankshaft, crankshaft - rod, main, & thrust bearings, connecting rod assembly & bushing, piston (wrist pin, retainer clip, & piston rings), oil jet tube, main bearing cap bolt, rocker arms (3126), fuel injection pump & governor, fuel injection pump mounting seal, fuel ratio control, fuel lines, timing advance, control rack (3116), oil pan oil pump, oil cooler housing, oil cooler core, oil filter base, HEU, high pressure oil lines, pump, & injector actuation pressure control valve, thermostat housing cover, water pump housing, water manifold, control module (ECM), sensors (boost pressure, atmospheric intake manifold air temp, oil pressure, coolant temperature, rack & timing, oil temperature, engine speed, & rack position), throttle position/pedal sensor, speed timing sensor.

HEAVY-DUTY EXTENDED SERVICE COVERAGE (ESC I)

Caterpillar will pay 100% of the components and labor charges for covered failures, with no deductible charges.

Following components are covered under the Heavy-Duty ESC I: intake manifolds, cylinder head casting, exhaust/injector sleeves, cylinder head bolts, cylinder head gaskets, freeze plug, spacer plate (block & head), spacer plate gasket, intake & exhaust valves, valve spring, insert guide, retainer, valve mechanism (including rocker arm, brackets, bridges, lobes, adjusting screws, nuts, shaft, & push tubes), camshaft, camshaft bearings, camshaft lifter assembly (including followers/clips), front covers & plates, front cover gaskets, front cover gears & power steering gear, flywheel housing, flywheel housing gasket, cylinder block casting, spacer block (3176), freeze plug, crankshaft casting, crankshaft - rod, main, & thrust bearings, connecting rod assembly & bushing, piston (wrist pin, retainer clip, & piston rings), oil jet tube, cylinder base, cylinder liner seals, cylinder liner filler band, main bearing cap bolt, fuel injection pump mounting seal, timing gears, oil pump, cooler housing, thermostat housing cover, water pump housing, control module (ECM).

HEAVY-DUTY EXTENDED SERVICE COVERAGE (ESC II)

Components listed under Heavy-Duty Extended Service Coverage I are covered plus the following:

Intake manifold studs and gaskets, inlet air heater relay, valve cover and base, fuel injection pumps and governor, fuel ratio control, fuel lines, timing advance, oil pan, oil cooler core, oil filter base, water manifold, and shut-off solenoid.

HEAVY-DUTY EXTENDED SERVICE COVERAGE (ESC Plus)

Caterpillar will pay 100% of the components and labor charges for covered failures, with no deductible charges.

Components listed under Heavy-Duty Extended Service Coverage I and Heavy-Duty Extended Service Coverage II are covered plus the following: control module (ECM), vibration damper, road speed buffer, sensors (boost pressure, atmospheric intake air temp, oil pressure, coolant temperature, rack & timing, fuel temperature, engine speed, & rack position), throttle position/pedal sensor, speed timing sensor.

Termination of this Service Contract will occur when the time, miles, or hours, whichever occurs first, from the original delivery date of the engine exceeds the coverage limits as specified on this Registration Certificate.

CATERPILLAR'S RESPONSIBILITIES

Caterpillar, during normal working hours at a place of business of an authorized dealer, will pay 100% of the components and labor charges, minus any applicable deductible, for the repair of covered component failures during the coverage period when caused by defects in materials or workmanship under normal use.

Caterpillar will provide (at Caterpillar's choice) either new, remanufactured or repaired components when replacing or repairing covered components which fail due to defects in materials or workmanship under normal use. Further, Caterpillar will also pay the components and labor charges for any engine component which is rendered unserviceable by the failure of a covered component.

Caterpillar will restore the engine to its operating condition prior to failure by repairing/replacing only the defective components and consequential damaged components necessary to remove/repair/install the defective components. Other parts removed in the process of the repair will be reinstalled as is, unless the Owner authorizes the additional expense to repair or replace.

Caterpillar will also pay the reasonable costs of any expendables or consumables, including but not limited to, lube oil, filter elements, hoses, vee-belts, gaskets and seals which are made unusable as a result of a covered component failure.

DEALER'S RESPONSIBILITIES

Authorized dealer accepts full liability for incorrect, invalid or late submissions. Registrations will be accepted up to one

V. OWNER'S RESPONSIBILITIES

The Owner shall operate and maintain the engine according to the guidelines and recommendations as specified in the appropriate Caterpillar Vehicle Engine Operation & Maintenance Management Guide. The Owner shall provide proof of compliance with the Maintenance Schedules, such as receipt or copies of work orders or invoices from authorized dealers showing the maintenance and services performed.

In the event of a covered component failure, the Owner must promptly make the engine available to an authorized dealer for repair and provide proof of this service contract registration by presenting the customer copy of the Registration Certificate.

The Owner is responsible for all costs not covered by this service contract as specified in Section VI, Exclusions and Limitations.

VI. EXCLUSIONS & LIMITATIONS

This service contract does not cover component failures caused by:

- dealer workmanship on subsequent repairs and dealer workmanship on repairs made to non-covered components.
- non-covered components (including bolts, clamps, and other fasteners that attach non-covered components to the engine).
- operator abuse, neglect, improper operation or accident.
- non-Caterpillar attachments, accessories and parts (any engine part that is not identified by a Caterpillar part number), including, but not limited to: engine compression and exhaust brakes, fans, radiators, air to air aftercooler cores, air conditioning compressor, clutches, filters, transmissions, torque converter, steering pump, hoses, belts and clamps.
- an application or installation not approved by Caterpillar.
- normal wear out, including but not limited to oil consumption, chemical/mechanical erosion and/or leaking seals or gaskets.
- unauthorized repairs or adjustments, including but not limited to: improper fuel setting and valve lash adjustments.
- repairs or alterations made by an unauthorized dealer.
- brakesaver unless specified as option on contract.
- fuel transfer pump, fuel priming pump, unit injectors and fuel nozzles, thermostat, starters, alternators, turbocharger, air compressor, electronic connectors and wiring.
- steel shims and cast iron block inserts.
- acts of God, war, vandalism, riot, theft, explosion, and any other act of nature or man.
- failure to follow maintenance procedures and scheduled component inspections/replacements as specified in the Caterpillar Vehicle Engine Operation and Maintenance Management Guide.

This service contract also does not pay for:

- normal preventative maintenance and scheduled component inspections/replacements as defined in the Caterpillar Vehicle Engine Operation and Maintenance Management Guide, including but not limited to valve lash adjustments, inspections, Scheduled Oil Sampling and maintenance items such as lube oils, filters, belts and hoses.
- performance complaints, including but not limited to, any adjustments to fuel settings, PAR tests, or programming of the Electronic Control Module.
- reimbursement for any travel or towing, or overnight lodging or meals or communications expenses and any other downtime or downtime-related expenses cargo damage or economic loss.
- any and all taxes.
- parts shipping charges.

VII. TRANSFER OF COVERAGE

The remaining coverage of this service contract may be transferred to subsequent owners during the coverage period at no extra charge, provided the new owner of the vehicle presents a copy of the current Registration Certificate to an authorized dealer within ten (10) days of the transfer of the vehicle title. Remaining coverage cannot be transferred from a covered engine to a non-covered engine.

VIII. REFUNDS

Any and all service contract fees are non-refundable.

IX. DISCLAIMERS

CATERPILLAR'S RESPONSIBILITIES UNDER THIS SERVICE CONTRACT ARE LIMITED TO THE PROVISION OF MATERIALS AND LABOR AS SPECIFIED HEREIN.

CATERPILLAR DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES IN CONNECTION HEREWITHE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

REMEDIES UNDER THIS SERVICE CONTRACT ARE LIMITED TO THE PROVISION OF MATERIALS AND LABOR AS SPECIFIED HEREIN.

CATERPILLAR IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

REPLACEMENT PARTS FURNISHED UNDER THE TERMS OF THIS SERVICE CONTRACT ARE COVERED UNDER THE APPLICABLE REPLACEMENT PARTS WARRANTY.

THIS SERVICE CONTRACT DOES NOT SUPERSEDE THE EMISSION WARRANTY FOR EMISSION-RELATED COMPONENTS.

MISREPRESENTATION OF THE ENGINE'S ELIGIBILITY FOR COVERAGE, OR THE ACTUAL ACCUMULATED MILEAGE, HOURS, OR AGE SHALL RESULT IN CANCELLATION OF THIS SERVICE CONTRACT BY CATERPILLAR WITH NO REFUND. CATERPILLAR SHALL BE ENTITLED TO ALL OTHER REMEDIES.



ON-HIGHWAY VEHICLES

ON-HIGHWAY VEHICLE ENGINE EXTENDED SERVICE COVERAGE

Registration Certificate For Units Operating In The U.S.A. And Canada
 For Mid-Range and Heavy Duty On-Highway Truck, School Bus, Recreational Vehicle,
 Fire Truck or Crash Rescue Engine Applications

PRESS HARD
 YOU ARE MAKING 3 COPIES

(Program Effective Date May 1, 1998)

CUSTOMER NAME

TECHNICAL SERVICES INC.

SELLING DEALER NAME

MINUTEMAN INC.SELLING DEALER CODE
A7311

MAILING ADDRESS

7 C.R. ST. GLENDALE, AZ

SELLING DEALER ADDRESS

2001 E. 101ST AV. GLENDALE, AZ

CITY

GLENDALE

CITY

WALPOLE

STATE/PROVINCE

MA

ZIP/POSTAL CODE

01212-7111

STATE/PROVINCE

MA

ZIP/POSTAL CODE

01208-1111

PHONE NUMBER

508-791-9521

CAT DEALER NAME

SOUTHERN CAT, INC.

CAT DLR. CODE

5420

TYPE OF REGISTRATION

New Registration Transfer Ownership Upgrade Coverage Warranty Replacement Engine Replacement Engine S/N 11111111

APPLICATION

On-Highway Truck School Bus Recreational Vehicle Fire Truck Crash Rescue Other Start Miles (km) 66Delivery MM/DD/YYYY
Date 01/15/2000Transfer Miles (km) UNIT #9800Transfer MM/DD/YYYY
Date 1/1Engine S/N 2K527791Engine Model C-112380
HP 910VIN F571077Vehicle Make STERLINGVehicle Model LT9500

COVERAGE (Reference On-Highway Vehicle Engine Price Matrix for Model/Coverage Availability)

ESC I With Brakesaver add \$250 SEE ATTACHED MULTI-UNIT
REGISTRATION FORMSESC II ESC Plus ESC II MIDRANGE Coverage Months 60 Coverage Miles 500,000 Coverage Hours 0 Deductible 0

COVERAGE FEES

ESC FEE \$1150

IMPORTANT!!

BRAKESAVER FEE \$Please ensure you are using the latest version of the On-Highway Vehicle
Engine Price Matrix.ADMIN. FEE \$FCC1 43727LATE FEE \$TOTAL FEE \$11501150Date 1/1/00I hereby certify that I have read and understand the terms and conditions checked above, and as
specified on the back of this Registration Certificate.

Customer Signature

I hereby certify that the engine serial number indicated above is eligible for the
coverage as specified on this Registration Certificate and have read and understand
the dealer's responsibilities as specified on the back of this Registration
Certificate.

Authorized Dealer Representative

EXHIBIT

E

I. INTRODUCTION

Caterpillar's Extended Service Coverage for On-Highway Vehicle Engine Service Contract, herein referred to as "service contract", for new vehicles powered with Caterpillar engines is an important part of Caterpillar's continuing effort to provide Caterpillar Vehicle Engine Owners with superior value and product support. This service contract provides the Owner assurance against unexpected repair costs for covered component failures due to defects in materials or workmanship under normal use.

II. TERMS AND CONDITIONS

This service contract is available for new vehicles powered with Caterpillar Mid-Range and Heavy Duty On-Highway Vehicle Engines, herein referred to as "new vehicle(s)". This service contract is only available for use within the continental boundaries of the United States and Canada.

The Owner should purchase this service contract on the original delivery date of the new vehicle at a Caterpillar authorized dealer herein referred to as "authorized dealer". The applicable start mileage and date must be recorded on this Service Contract.

This service contract runs concurrently with the Caterpillar On-Highway Vehicle Engine Warranty and provides full components and labor coverage for covered components failures due to defects in Caterpillar materials or workmanship under normal use. Expiration of this contract will occur when the time or mileage from the original delivery date exceeds the coverages as specified on this Service Contract.

All components listed below are covered under these programs except the applicable exclusions listed under Section VI, Exclusions & Limitations:

A. MID-RANGE EXTENDED SERVICE COVERAGE (ESC II)

ESC II for Mid-Range is available in two different deductibles:

- Option 1: Caterpillar will pay 100% of the components and labor charges for covered failures, with no deductible charges.
- Option 2: Caterpillar will pay 100% of the components and labor charges for covered failures, less a \$500 deductible charge per service visit.

The following components are covered under the Mid-Range ESC II: exhaust manifolds, studs, & gaskets, inlet air heater & relay, intake manifolds, cylinder head casting, exhaust/injector sleeves, cylinder head bolts, cylinder head gaskets, freeze plug, intake & exhaust valves, valve spring, insert guide, rotocoupling, & retainer, valve mechanism (including rocker arm, brackets, bridges, dowels, adjusting screws, nuts, shaft, & push tubes), valve cover & base, camshaft, camshaft bearings, camshaft lifter assembly (followers/clip), front covers & plates, front cover gaskets, from cover gears & power steering gear, flywheel housing, flywheel housing gasket, cylinder block casting, freeze plug, crankshaft, crankshaft - rod, main, & thrust bearings, connecting rod assembly & bushing, piston (wrist pin, retainer clip, & piston rings), oil jet tube, main bearing cap bolt, crossover tubes (3126), fuel injection pump & governor, fuel injection pump mounting seal, fuel ratio control, fuel lines, timing advance, control rack (3116), oil pan, oil pump, oil cooler housing, oil cooler core, oil filter base, HEUI high pressure oil lines, oil pump, & injector actuation pressure control valve, thermostat housing cover, water pump housing, water manifold, control module (ECM), sensors (boost pressure, atmospheric intake manifold air temp, oil pressure, coolant temperature, rack & timing, fuel temperature, engine speed, & rack position), throttle position/pedal sensor, speed timing sensor.

B. HEAVY-DUTY EXTENDED SERVICE COVERAGE (ESC I)

- Caterpillar will pay 100% of the components and labor charges for covered failures, with no deductible charges.

The following components are covered under the Heavy-Duty ESC I: intake manifolds, cylinder head casting, exhaust/injector sleeves, cylinder head bolts, cylinder head gaskets, freeze plug, spacer plate (block & head), spacer plate gasket, intake & exhaust valves, valve spring, insert guide, rotocoupling, & retainer, valve mechanism (including rocker arm, brackets, bridges, dowels, adjusting screws, nuts, shaft, & push tubes), camshaft, camshaft bearings, camshaft lifter assembly (including followers/clip), front covers & plates, front cover gaskets, from cover gears & power steering gear, flywheel housing, flywheel housing gasket, cylinder block casting, spacer block (3176), freeze plug, crankshaft casting, crankshaft - rod, main, & thrust bearings, connecting rod assembly & bushing, piston (wrist pin, retainer clip, & piston rings), oil jet tube, cylinder liner, cylinder liner seals, cylinder liner filler band, main bearing cap bolt, fuel injection pump mounting seal, timing gears, oil pump, oil cooler housing, thermostat housing cover, water pump housing, control module (ECM).

C. HEAVY-DUTY EXTENDED SERVICE COVERAGE (ESC II)

All components listed under Heavy-Duty Extended Service Coverage I are covered plus the following:

Exhaust manifold studs and gaskets, inlet air heater relay, valve cover and base, fuel injection pumps and governor, fuel ratio control, fuel lines, timing advance, oil pan, oil cooler core, oil filter base, water manifold, and shut-off solenoid.

D. HEAVY-DUTY EXTENDED SERVICE COVERAGE (ESC Plus)

Caterpillar will pay 100% of the components and labor charges for covered failures, with no deductible charges.

All components listed under Heavy-Duty Extended Service Coverage I and Heavy-Duty Extended Service Coverage II are covered plus the following: control module (ECM), vibration damper, road speed buffer, sensors (boost pressure, atmospheric manifold air temp, oil pressure, coolant temperature, rack & timing, fuel temperature, engine speed, & rack position), throttle position/pedal sensor, speed timing sensor.

Expiration of this Service Contract will occur when the time, miles, or hours, whichever occurs first, from the original delivery date of the engine exceeds the coverage limits as specified on this Registration Certificate.

III. CATERPILLAR'S RESPONSIBILITIES

Caterpillar, during normal working hours at a place of business of an authorized dealer, will pay 100% of the components and labor charges, minus any applicable deductible, for the repair of covered component failures during the coverage period when caused by defects in materials or workmanship under normal use.

Caterpillar will provide (at Caterpillar's choice) either new, remanufactured or repaired components when replacing or repairing any covered components which fail due to defects in materials or workmanship under normal use. Further, Caterpillar will also pay the components and labor charges for any engine component which is rendered unserviceable by the failure of a covered component.

Caterpillar will restore the engine to its operating condition prior to failure by repairing/replacing only the defective components and consequential damaged components necessary to remove/repair/install the defective components. Other parts removed in the process of the repair will be reinstated as is, unless the Owner authorizes the additional expense to repair or replace.

Caterpillar will also pay the reasonable costs of any expendables or consumables, including but not limited to, lube oil, filter elements, hoses, vee-belts, gaskets and seals which are made unusable as a result of a covered component failure.

IV. DEALER'S RESPONSIBILITIES

The authorized dealer accepts full liability for incorrect, invalid or late enrollments. Registrations will be accepted up to one hundred and eighty (180) days from original delivery date date of sale at the published price levels. All registrations made by the authorized dealer after the initial enrollment period, and up to one year from original delivery date, will be charged an additional late registration fee.

V. OWNER'S RESPONSIBILITIES

The Owner shall operate and maintain the engine according to the guidelines and recommendations as specified in the appropriate Caterpillar Vehicle Engine Operation & Maintenance Management Guide. The Owner shall provide proof of compliance with the Maintenance Schedules, such as receipts or copies of work orders or invoices from authorized dealers showing the maintenance and services performed.

In the event of a covered component failure, the Owner must promptly make the engine available to an authorized dealer for repair and provide proof of this service contract registration by presenting the customer copy of the Registration Certificate.

The Owner is responsible for all costs not covered by this service contract as specified in Section VI, Exclusions and Limitations.

VI. EXCLUSIONS & LIMITATIONS

This service contract does not cover component failures caused by:

- dealer workmanship on subsequent repairs and dealer workmanship on repairs made to non-covered components.
- non-covered components (including bolts, clamps, and other fasteners that attach non-covered components to the engine).
- operator abuse, neglect, improper operation or accident.
- non-Caterpillar attachments, accessories and parts (any engine part that is not identified by a Caterpillar part number), including, but not limited to: engine compression and exhaust brakes, fans, radiators, air to air aftercooler cores, air conditioning compressors, clutches, filters, transmissions, torque converters, steering pumps, hoses, belts and clamps.
- an application or installation not approved by Caterpillar.
- normal wear out, including but not limited to oil consumption, chemical/mechanical erosion and/or leaking seals or gaskets.
- unauthorized repairs or adjustments, including but not limited to: improper fuel setting and valve lash adjustments.
- repairs or alterations made by an unauthorized dealer.
- brakesaver unless specified as option on contract.
- fuel transfer pump, fuel priming pump, unit injectors and fuel nozzles, thermostat, starters, alternators, turbocharger, air compressor, electronic connectors and wiring.
- steel shims and cast iron block inserts.
- acts of God, war, vandalism, riot, theft, explosion, and any other act of nature or man.
- failure to follow maintenance procedures and scheduled component inspections/replacements as specified in the Caterpillar Vehicle Engine Operation and Maintenance Management Guide.

This service contract also does not pay for:

- normal preventative maintenance and scheduled component inspections/replacements as defined in the Caterpillar Vehicle Engine Operation and Maintenance Management Guide, including but not limited to valve lash adjustments, inspections, Scheduled Oil Sampling and maintenance items such as lube oils, filters, belts and hoses.
- performance complaints, including but not limited to, any adjustments to fuel settings, PAR tests, or programming of the Electronic Control Module.
- reimbursement for any travel or towing, or overnight lodging or meals or communications expenses and any other downtime or downtime-related expenses cargo damage or economic loss.
- any and all taxes.
- parts shipping charges.

VII. TRANSFER OF COVERAGE

The remaining coverage of this service contract may be transferred to subsequent owners during the coverage period at no extra charge, provided the new owner of the vehicle presents a copy of the current Registration Certificate to an authorized dealer within ten (10) days of the transfer of the vehicle title. Remaining coverage cannot be transferred from a covered engine to a non-covered engine.

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**Caterpillar On-Highway Vehicle Engine
Extended Service Coverage
Registration Form**

For Multiple Unit Registrations

Date 2-7-00
TECI # 1234567

Model	H/P	Engine S/N	Vehicle ID #	Unit #	Del. Date	Start Miles
1 C.12	380/410	2E52A7352	ES7166	6000	01-15-00	66
2	2E52A7357	ES7163	6100	12-08-99	66	
3	2E52A7358	ES7162	6200	01-15-00	70	
4	2E52A7356	ES7161	6300	01-15-00	75	
5	2E52A7354	ES7165	6700	02-15-00	100	
6	2E52A7355	ES7170	6800	01-15-00	100	
7	2E52A7358	ES7177	6900	01-15-00	100	
8	2E52A7359	ES7180	7000	01-15-00	66	
9	2E52A7365	ES7174	7400	01-15-00	66	
10	2E52A7372	ES7168	7500	01-15-00	66	
11	2E52A73877	ES7161	7600	12-08-99	66	
12	2E52A8268	ES7175	7700	01-15-00	66	
13	2E52A73561	ES7171	7800	01-15-00	100	
14	2E52A7356	ES7177	7900	01-15-00	100	
15	2E52A73857	ES7172	8000	01-15-00	100	
16	2E52A8276	ES7167	8100	01-15-00	100	
17	2E52A7372	ES7173	8200	01-15-00	67	
18	2E52A7373	ES7176	8400	01-15-00	66	
19	2E52A73731	ES7166	8600	12-08-99	71	
20	2E52A7373	ES7164	8500	01-15-00	67	

This form is to be used as an addendum to On-Highway Vehicle Registration Certificate (LELT6573) which identifies specific terms, conditions, and component coverages.

LELT8361-01

CATERPILLAR®

ON-HIGHWAY VEHICLE ENGINE SERVICE COVERAGE MATRIX

Matrix Effective February 1, 2001

ITEM	PROGRAM START DATE	ITEM 11988	ITEM 11989	ITEM 11990	ITEM 11991	ITEM 11992	ITEM 11993	ITEM 11994	ITEM 11995	ITEM 11996	ITEM 11997	ITEM 11998
INTRODUCTION & EXHAUST												
Exhaust Manifolds, Stud Bolts, & Gaskets	YES	NO	YES	YES	NO							
Inlet Air Heater, Relay, & Lines (Includes Lines & Gaskets)	YES	NO	YES	YES	NO							
Turbo (Includes Seals, Lines, & Gaskets)	YES	NO	YES	YES	NO							
Intake Manifolds (Includes Lines & Gaskets)	YES	NO	YES	YES	NO							
CYLINDER HEAD (100%)												
Cylinder Head Casting	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Injector Sleeves & Sleeve Seats	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Exhaust Sleeves	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Exhaust Head Bolts	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Cylinder Head Gasket	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Exhaust Plug	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Spacer Deck (Block to Head)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Spacer Deck O-Rings	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Int. & Ext. Valve Seats/Seals	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Exhaust Plug	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
VALVE MECHANISM (Includes Rocker-Arm, Brackets, Bridges, Dowels, Adjusting Screws, Nut, Shaft, & Push Tubes)												
Valve Cover Gasket & Base Gasket	YES	NO										
Valve Spring Retainer	YES	NO										
Rocker Arm	YES	NO										
Base Gasket	YES	NO										
Valve Mechanism (Includes Rocker-Arm, Brackets, Bridges, Dowels, Adjusting Screws, Nut, Shaft, & Push Tubes)	YES	NO										
FRONT AND REAR COVERS (100%)												
Front Cover, Front Housing, & Plate	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Front Cover Gasket, Plate, & Bolts	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Front Cover Gears, Bearings, & Relainers	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Shaft Seal	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Shaft Seal Bolts	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Crankshaft Bushing	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Flywheel Housing	YES	NO										
Flywheel Nut/Bolt (Base)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Crankshaft Seal (Front or Rear)	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Vibration Damper	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
SHORT BLOCK (100%)												
Cylinder Block Casting	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Strength Block (V77)	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Spacer Block O-Ring	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Freeze Plug	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Crankshaft Casting	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Crankshaft Bearing	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Connecting Rod Assembly & Bearing	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Piston Crown, Ring, & Clip	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Wrist Pin, Relainer Clip, and Piston Ring	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Oil Jet Tube	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Cylinder Liner	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Cylinder Liner Seal & Filler Band	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Main Bearing Cap Bolt	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES

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LEET6524-03